



June 8, 1995

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FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF COMMERCE

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

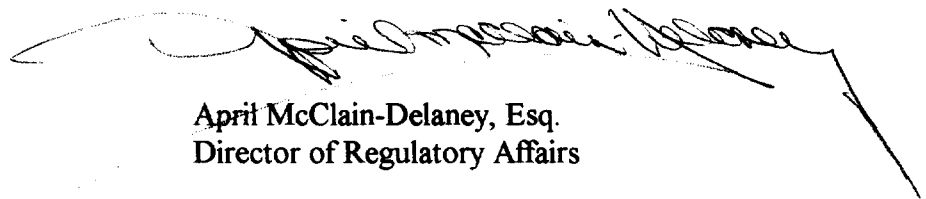
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Re: Amendment to the Commission's Regulatory Policies Governing Domestic
Fixed Satellites and Separate International Satellite Systems,
IB Docket No. 95-41 (released April 25, 1995)

Dear Mr. Caton:

Orion Network Systems, Inc. ("Orion") hereby submits an original and four (4) copies of
its Comments in response to the Commission's Notice of Proposed Rulemaking in the above
captioned proceeding.

Very truly yours,



April McClain-Delaney, Esq.
Director of Regulatory Affairs

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF SECRETARY

In the Matter of)

Amendment to the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

IB Docket No. 95-41

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF ORION NETWORKS SYSTEMS, INC.

ORION NETWORK SYSTEMS, INC.

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Dated: June 8, 1995

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To: The Commission

COMMENTS OF ORION NETWORKS SYSTEMS, INC.

Orion Network Systems, Inc. ("Orion") hereby submits these Comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.¹

I. INTRODUCTION AND SUMMARY

Orion is the parent company of the general partner of Orion Atlantic, L.P. -- a separate international satellite system which last year launched its first satellite now located at 37.5 degrees West Longitude. Accordingly, Orion has a vested interest in this proceeding which proposes to permit all U.S. licensed fixed-satellites to provide international and domestic services on a co-primary basis.

Orion applauds the Commission's proposal to authorize domestic satellites and U.S. separate systems to provide both domestic and international services. Orion generally supports the authorization of non-U.S. separate satellite systems to provide domestic services. Such policy

¹ Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, IB Docket No. 95-41 (released April 25, 1995).

facilitates greater service offerings and competition in the U.S. market and complements general Global Information Infrastructure ("GII") principles of competition, non-discrimination and open access. Orion adamantly opposes Comsat's entry into the U.S. marketplace using INTELSAT and INMARSAT. Orion requests that unless and until issues related to the restructuring and/or privatization of INTELSAT have been adequately resolved, Comsat be prohibited from providing intra-U.S. services using INTELSAT and INMARSAT. Further, given the potential anti-competitive implications, Orion submits that these issues should be separately addressed within a rulemaking specifically addressing Comsat's entry.

Orion opposes any elimination of the current two stage financial justification showing for separate systems. The international business and regulatory environment is markedly different than the domestic environment. Further, the proposed modification would create a serious and untenable disadvantage to U.S. companies which compete against foreign entities for international orbital slots and in the licensing of their systems.

Orion believes that satellite operators should be able to elect to provide services on a non-common carrier basis. Orion also supports the Commission's initiative to apply the same licensing procedures for earth stations which communicate with domestic satellites as those which communicate with international satellites, and supports the application of the same technical standards which apply to U.S. licensees to those non-U.S. satellites which offer domestic services.

II. ORION SUPPORTS AN INCREASE IN THE AMOUNT OF SATELLITE CAPACITY AVAILABLE FOR INTERNATIONAL AND DOMESTIC USE.

A. U.S. Fixed-Satellites Should Be Permitted to Provide Domestic Services and International Services on a Co-Primary Basis

Orion applauds the Commission's proposal to modify the current Transborder Policy and Separate System Policy to permit all U.S. licensed fixed-satellites to provide both domestic and international services. As noted in Orion Atlantic's application to provide domestic services over six of its transponders, there is an increasing globalization of the telecommunications market and

customers are demanding seamless communications in which domestic and international communications are linked as single service offerings.²

This proposed modification is supported by several public interest reasons. First, these modifications encourage the maximum utilization of satellite facilities, and discourage the waste of scarce orbital slots and radio frequency resources. Second, these policies also support "regulatory parity" between providers of similar services in similar geographic areas, rather than the current arbitrary distinction which runs counter to GII goals of global, seamless communications. Third, such modifications will facilitate the introduction of additional space segment into the U.S. marketplace - - a market which currently suffers from a lack of available satellite capacity.³

B. Non-U.S. Separate Systems Should Generally be Allowed into U.S. Market

Orion supports the notion that non-U.S. licensed satellites may also provide services within the United States. The GII principles of competition, non-discrimination and open access are epitomized by the opening of America's borders to foreign satellites.

In advocating foreign administrations must open their borders to U.S. licensed satellites, our government must lead by example. Indeed, our country has a well-established satellite marketplace which would be well served by additional "foreign" competition - - particularly in a time in which available satellite capacity is in limited supply.

Notwithstanding these principles, several commenters in the recent Commission rulemaking concerning market entry⁴ advocated a "reciprocity" concept which states that prior to

² Application of International Private Satellite Partners, L.P. for Modification of Authorization or a Declaratory Ruling to Provide Ancillary Domestic Services, FCC Application File No. CSS-95-001-ML (filed October 12, 1994).

³ "Desperately Seeking C-Band", Via Satellite, December 1994, at 16-20; Broadcasting & Cable, September 19, 1994, at 61.

⁴ Market Entry and Regulation of Foreign-affiliated Entities, IB Docket No. 95-22, RM-8355, 8392 (released February 17, 1995).

allowing foreign satellites to provide intra-U.S. services, the market of that foreign country should be equally open for U.S. satellites.

This reciprocity argument, while understandable, should be viewed with caution. Reciprocity should not be automatically adopted as the "panacea" to all trade imbalances and foreign regulatory barriers. Rather, telecommunications policies seem less based on U.S. regulatory actions, and more on a particular country's own economic, political and social needs. Moreover, "reciprocity" policies can often result in retaliatory measures by the foreign government(s) in question. These retaliatory measures can further hinder U.S. satellite operators abroad.

Further, while the concept of reciprocity is easily advocated, it may be difficult to implement. For example, is the regulatory "openness" of a foreign country measured by a sector-to-sector comparison? If so, defining the sector is critical. Further complications exist if an objective of policy makers is to promote foreign investment in U.S. businesses

As the same time, Orion does recognize that there might be circumstances where reciprocity, properly crafted, might be an appropriate telecommunications policy. However, these instances are likely to be few, and should be implemented in light of general GII principles of open access and competition.

C. COMSAT Should Not Now Be Allowed to Provide Domestic Services

While Orion advocates robust competition between domestic satellite operators and separate system operators (both U.S. and non-U.S. licensed systems), it strongly opposes any authorization which allows Comsat to use INTELSAT and/or INMARSAT satellites to enter the domestic services marketplace.

As U.S. signatory to INTELSAT and INMARSAT - - two special international treaty organizations - - Comsat enjoys both treaty-based privileges and immunities and other indirect benefits not available to the other satellite competitors. Such advantages include immunity from antitrust and competition regulation, relief from Part 25 licensing procedures applicable to all

other domestic satellite and separate system satellite licensees, Presidential appointees on Comsat's Board of Directors (i.e., a direct communications link to the Administration), the ability to raise financing at rates not available to the private sector and relief from the regulatory and spectrum fees paid by all other satellite licensees.

Comsat could also potentially leverage its signatory status to cross-subsidize domestic service offerings through international service offerings. The separate systems have long advocated stricter FCC scrutiny of Comsat concerning structural separation issues (e.g., separating competitive commercial functions from monopoly and signatory functions) and other regulatory safeguards. Such issues become increasingly important if Comsat seeks to provide not only ancillary domestic services, but to enter the domestic marketplace as a special "treaty-exempt" competitor.

As such, Orion recommends that Comsat not be allowed to provide domestic services until there has been a fundamental "competitive" restructuring of the international treaty organization(s) of which it is a signatory. Any proposed "competitive restructuring" must at a minimum ensure equitable market access and the fair and equal treatment of all satellite providers. Such restructuring must strip Comsat of all indirect benefits and treaty privileges and immunities now enjoyed, and eliminate any potential for the cross-subsidization of domestic service offerings via international service offerings.

The privatization/restructuring of INTELSAT, and Comsat's role in any newly privatized or re-structured entity(ies), is currently the subject of an INTELSAT Working Party and is currently being addressed by several U.S. governmental agencies with jurisdiction over these issues. Issues related to Comsat's entry into the domestic services marketplace seem best addressed within that process, and not in this pending rulemaking.

Further, given the anti-competitive elements associated with Comsat's entry into the domestic services marketplace, there should be - - at a bare minimum - - a separate rulemaking specifically seeking comment on such entry.

III. INTERNATIONAL REGULATORY ENVIRONMENT JUSTIFIES RETENTION OF TWO STAGE FINANCIAL JUSTIFICATION SHOWING

The Commission currently allows the requisite financial qualification showing made by separate satellite system operators to be accomplished in two stages in order to accommodate the unique circumstances applicable to the international satellite environment.⁵ Domestic satellites, on the other hand, must demonstrate their financial qualifications prior to filing for and obtaining a license -- a one stage process. See 47 C.F.R. § 25.140 (d).

The two stage process has historically been justified by the uncertainty of the INTELSAT consultation process for separate satellite systems and the business risks associated with dealing with foreign administrations concerning coordination and/or use of a proposed satellite. The Notice now proposes to apply the one stage domestic satellite process to international satellites. The Commission's rationale for this modification is that if international satellites can provide domestic services, they will be able to secure financing based upon revenues from intra-U.S. service offerings.⁶

Orion submits that this tentative finding is based upon erroneous assumptions. Moreover, the historical reasons to justify a two stage qualification still exist and are not affected by the proposals of this Notice.

A. Historical and Business Reasons for Two Stage Showing Still Valid

The regulatory and business environment for international satellites will not be altered by the policies proposed in the Notice. International satellites will continue to face more regulatory uncertainty than domestic satellites because they must coordinate with INTELSAT, undertake ITU consultation and coordinate with other affected administrations. Unlike domestic operators, separate satellite operators face regulatory barriers into many countries, including obtaining

⁵ *Establishment of Satellite Systems Providing International Communications*, 101 F.C.C.2d 1046, 1164 (1985) ("Separate Systems Decision"), recon. 61 RR2d 649 (1986), further recon., 1 F.C.C. Rcd. 439 (1986).

⁶ Notice at 14. The Commission states, "Since all U.S.-licensed fixed satellites will be permitted to provide domestic and international service on a co-primary basis, all applicants should be able to obtain financial commitments based on the justified expectation of revenues from the provision of domestic service."

licenses for ground segment equipment in every country they serve from the foreign licensing authority. These regulatory uncertainties appear during the preliminary licensing process, and continue throughout operation. Such uncertainties make operation of an international satellite more unpredictable, costly and subject to financial risk than operation of a domestic satellite.

In addition, the design of an international satellite remains "fluid" while the operator undertakes the tasks of international coordination and consultation. The satellite's business and marketing plan, upon which financing is based, also remains "fluid" until the coordination and consultation process results in some certainty. Coordination decisions directly affect which markets are to be served by the operator, which transponders can or cannot be utilized, if and how dbw levels are compromised and the types of services that may be provided.

There are also business and technical considerations which are different for international satellites than domestic satellites. The Notice acknowledges that domestic satellites occupy orbital locations best suited for domestic service and separate systems occupy orbital locations best suited for international services, and Commission concludes there will not be full competition between the domestic and international systems. Notice at para. 22.

Orion agrees with this acknowledgment. International systems and domestic systems are generally not serving the same customers, markets or geographic regions. Further, in the U.S. marketplace, domestic satellite operators have several advantages over international operators. Domestic orbital slots permit CONUS coverage (e.g., coverage of all 48 contiguous states), whereas international orbital slots permit only regional coverage or no U.S. coverage. Domestic satellites are thus advantaged because full CONUS coverage is generally acknowledged as more marketable and attractive to customers than regional coverage. Further, domestic satellites enjoy more predictable revenue streams due to the stable U.S. regulatory environment and the fact the domestic marketplace is well established.

By contrast, the international satellite market is extremely dynamic. Global traffic predictions (and associated revenue streams) are more volatile given their dependence upon the economic and political developments of particular geographic regions. Even with any added

revenues from the provision of intra-U.S. services, international satellites are still at a disadvantage. Because only a portion of an international satellite's transponders can be utilized for domestic services (dependent upon position in orbital arc), only a corresponding "incidental" percentage of the revenues can be derived from such services.⁷

In sum, international satellite operators confront different regulatory and business issues than domestic satellite operators, which in turn affects the timing by which international satellite operators can make a financial justification showing.

B. Policy Change Would Create Advantage for Foreign Operators

A serious and untenable drawback of the proposed one stage showing is foreign operators would have an advantage over U.S. satellite operators in obtaining international orbital slots and gaining authorization for their satellites. While the domestic marketplace has a fairly predictable demand for orbital locations, many foreign corporations and government entities from multiple nations compete for international orbital slots. The sheer number of competitors make it imperative to act expeditiously in filing for an orbital slot and obtaining an authorization for a satellite system.

However, under the Commission's proposal, Orion would be unfairly disadvantaged with respect to foreign companies when competing for international slots and licensing its satellites because it would be hindered by making a financial qualification showing prior to obtaining a conditional permit. By contrast, foreign competitors - - not be hindered by the Commission's licensing regulations - - would have an unfair advantage in obtaining orbital slots and launching their own foreign satellite(s). U.S. regulations should not hinder domestic companies attempting to compete in the global marketplace.

⁷ The Orion 1 satellite, as currently configured, has less than 25% of its total transponder capacity available for intra-US applications. Further, not all of Orion's planned satellites will have footprints which cover the United States. Thus, the Commission's finding that an international satellite can justify its financing based upon revenues from the provision of domestic service is not supportable.

For all of the foregoing reasons, Orion submits the changes articulated within the Notice do not alter the present regulatory and business environment nor justify a change in the current two stage financial justification showing.

If the Commission desires "regulatory parity" for all U.S. licensees with respect to the financial qualification showing, Orion submits that domestic satellite operators should also be allowed to make a two stage financial justification showing. In light of the fact that domestic satellite systems will now be allowed to provide international services (and thus will now confront additional international coordination/regulatory issues), the domestic operators should also be allowed to take advantage of a two stage showing.

IV. A NON-COMMON CARRIER ELECTION SHOULD BE ALLOWED

Orion supports the finding that satellite operators should be able to elect to provide customized alternatives and flexible non-common carrier service offerings to domestic and international end users. While the genesis of the non-common carrier classification for separate system operators was initially premised on Executive Branch restrictions which limited service offerings to the sale or long term lease of capacity (for services not interconnected to the public switched network), other rationales remain for retaining a non-common carrier classification. Specifically, the public interest is served by providers being able to provide both bulk capacity offerings and also flexible, customer-specific communications offerings on a deal-by-deal basis.

Orion would also note separate system providers must compete in the international marketplace against INTELSAT (and Comsat) and other foreign communications consortiums unencumbered by the restraint of common carriage. The underlying reason for the Satellite Act of 1962 and creation of the INTELSAT Treaty was the acknowledgment that international satellites are expensive to build and operate, and that an international pooling of money was necessary to ensure a global satellite system was achieved. It is now unnecessary for government entities to finance satellite systems. However, in reality a global separate system requires investment from around the globe. Separate systems which compete against INTELSAT or

other multi-national consortiums (licensed in foreign jurisdictions) must continue to have access to financing from international sources to present a viable competitive alternative. It is therefore imperative that U.S. licensed international satellite operators have the ability to elect non-common carrier treatment, - - including relief from certain foreign ownership restrictions encompassed by a common carrier classification.⁸

V. EARTH STATION LICENSING ISSUES ADDRESSED BY THE NOTICE

A. U.S. Licensed Earth Stations Should Be Subject To Same Licensing Procedures

Orion supports the Commission's initiative in this Notice to apply the same licensing procedures for earth stations which communicate with domestic satellites as those which communicate with international satellites. Unless there are public interest concerns or technical interference reasons to the contrary, Orion submits that all streamlined licensing procedures which currently apply to transmit-receive and receive-only earth stations which communicate with domestic satellites should also be equally applicable to those stations which communicate with international satellites.

The elimination of arbitrary regulatory distinctions between earth station communications with domestic satellites and those with international satellites -- other than for valid interference reasons -- facilitates the goals of a globalized, seamless GII.

B. Same Technical Requirements For All Satellites Providing Domestic Services

The Notice solicits comment as to whether the more rigorous technical requirements applicable to U.S. licensed satellites, such as 2 degrees spacing, should be imposed on non-U.S. satellites. Orion supports the application of regulatory parity to non-U.S. satellites and believes that such operators should comply with our country's more rigorous technical specifications.

⁸ The Commission states in the Notice that licensees who choose to operate on a common carrier basis will continue to be subject to Title II and Section 310(b) of the Communications Act. Notice at 16, footnote 45. Orion agrees with this policy in that there are certain instances where the public interest dictates the retention of common carrier status and the Commission should reserve discretion to ensure such entities are sufficiently regulated.

This policy is necessary to curb interference concerns and for predictability in allocating spectrum and in the planning of future satellite systems. Therefore, Orion fully supports the application of the stricter technical requirements on foreign operators desiring to provide intra-US services.

VI. CONCLUSION

Orion supports the Commission's proposal to allow domestic satellites and separate satellite systems to provide both domestic and international services on co-primary basis. However, Orion strongly urges the Commission not to allow Comsat to provide intra-U.S. services using INTELSAT and INMARSAT satellites until there has been an adequate resolution of the privatization and/or restructuring of those special international treaty organizations of which Comsat is a signatory. At bare minimum, Orion argues that such entry should not be the subject of this rulemaking, but a separate rulemaking specifically addressing such issues.

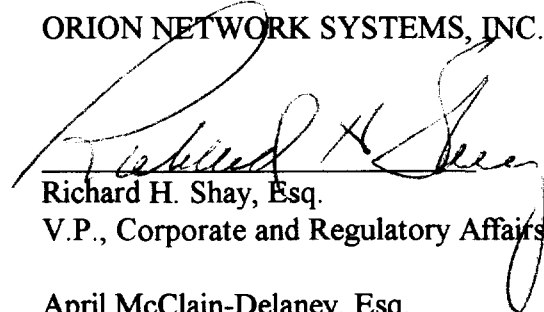
Orion also submits that the two stage financial qualification showing for separate systems should be maintained as international satellite operators confront different regulatory and business issues than domestic satellite operators, and these issues in turn affect the time it takes to obtain financing for an international satellite.

Orion supports the ability to elect to provide satellite services on a non-common carrier basis. Further, Orion supports the Commission's proposal to apply the same licensing procedures for earth stations which communicate with domestic satellites as those which communicate with international satellites, and the application of the same technical standards to all satellites (both

U.S. and non-U.S. licensed) which propose to offer intra-U.S. services. Further, the proposed one stage showing would give foreign licensed operators an advantage over U.S. licensed operators in obtaining international orbital slots.

Respectfully submitted,

ORION NETWORK SYSTEMS, INC.

A handwritten signature in dark ink, appearing to read "Richard H. Shay", is written over a horizontal line.

Richard H. Shay, Esq.
V.P., Corporate and Regulatory Affairs


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June 8, 1995

CERTIFICATE OF SERVICE

I, Julie Fleener, a legal coordinator with Orion Network Systems, Inc., hereby certify that on this 8th day of June, 1995, a copy of the foregoing Comments of Orion Network Systems, Inc. was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.


Julie Fleener

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